

## F. J. TESTA IS INDICTED

### Criminal Libel Is Grand Jury's Finding.

Frank J. Testa was indicted for criminal libel by the grand jury in a partial report made before Judge De Bolt yesterday morning. The accused avoided the necessity of a warrant of arrest by surrendering himself to the court. He was released on his own recognizance after reserving his plea to the indictment by consent of Assistant Attorney General Fleming.

#### CONVICTED OF FELONY.

Kawamoto was found guilty by a jury, before Judge De Bolt yesterday, of an outrage. W. S. Fleming and W. T. Rawlins appeared for the Territory, and E. A. C. Long for the defendant. The following jury was found satisfactory as drawn: Percy Lishman, C. J. Falk, J. R. Galt, W. M. Buchanan, W. E. Brown, S. K. Paulo, John Kidwell, Jas. Bicknell and C. J. Ludwigen. Three witnesses were called and five exhibits presented by the prosecution. The defendant had four witnesses and the prosecution put on a witness in rebuttal. It took the jury nine minutes to find the defendant guilty. Notice of motion for a new trial was given by Mr. Long. Sentence will be pronounced at 9 o'clock this morning.

#### AXTELL VS. HENDRICKS.

J. C. Axtell's damage suit against H. E. Hendricks for malicious arrest got well under way on new trial before Judge Gear and a jury yesterday. The plaintiff was on the stand a large part of the day.

#### DIVORCE REFUSED.

An unusual thing in Hawaiian jurisprudence happened yesterday, when Judge Gear denied a decree of divorce to Rose Kalia against Solomon Kalia. If there is anything justice in Hawaii is speedy in, it is in putting asunder "what God hath joined," and the number of divorces refused is so small as to make one remarkable when it happens. J. Lightfoot, attorney for the libellant in this case, noted an appeal. W. L. Whitney appeared for the libellee. Judge Gear took a day to decide the case after its hearing.

#### ACTION DISMISSED.

Judge Gear, at the request of the plaintiff, ordered the discontinuance of the action to quiet title in a leasehold containing about twenty-one acres at Waikiki, brought by Lam Wo Sing against Moses Puahi, L. K. Puahi and Tam Pong. Fleming and Derby appeared for plaintiff; Ashford for defendant.

#### RAPID TRANSIT APPEAL.

A motion for a new trial, with a bond on appeal, has been filed by defendant in the suit of Manuel P. Ferreira vs. Honolulu Rapid Transit & Land Co., in which a verdict for plaintiff with damages of \$3000 was returned.

#### WILL OF SAM SACHS.

L. Schweitzer has petitioned for probate of the will of Samuel Sachs, in which Samuel, son of the testator, and Mrs. Mary Downey are named as devisees and legatees and the petitioner is named as executor. The estate is represented as all personal and valued at \$70,000.

"In recognition of the services and friendship of Mrs. Mary Downey," the testator says, "I do give, devise and bequeath to the said Mrs. Mary Downey the sum of two hundred and fifty dollars, and I do request that the said sum be paid over to Mrs. Downey out of moneys now in the bank in my name."

All his remaining property he proceeds to leave to his son Samuel, allowing him during minority an income of \$20 a month and appointing Mrs. Emma Puhl as his guardian.

In the will, executed February 2, 1902, in presence of Chas. J. Fishel, Wm. Merz and Edwin S. Gill, the testator appointed Eli Peck, who has since died, as executor. By a codicil dated May 6, executed in presence of Johannes P. Eckardt, James M. Tracy and Morris Rosenblatt, Mr. Schweitzer was substituted as executor.

#### ALLEGED TELEPHONE VANDALISM.

Henry E. Cooper, in his petition in which Judge Gear ordered a temporary writ of injunction against the Mutual Telephone Co., says he is the owner and in lawful possession of premises on the corner of Punahoa and Beretania streets, which are used as a home by himself and his family. Upon the premises and fronting on both the streets named are certain royal palm trees, of great value and beauty, and highly prized by plaintiff as ornaments to his residence. Then the grievance is thus stated:

"That the defendant, the Mutual Telephone Co., Ltd., is engaged in the reconstruction of its lines of telephone along said Punahoa street and Beretania street, and that in the reconstruction of said lines along Punahoa street has cut down and destroyed certain royal palm trees, and is continuing in the reconstruction of said telephone lines along said Beretania street, and although notified by the plaintiff to desist from further destruction of said trees, has refused to do so."

## MUST PAY RETAINERS

### Royal Agreements Are No Longer Held to Be Binding.

Royal retainers are not required to work without monetary compensation in the present generation, whatever they might have done in the days of the Dowager Kapilani. That at least is the decision of the Supreme Court in the suit of Antonio Bright against Prince David Kawanakoa.

Bright, during the lifetime of Queen Kapilani, was in charge as supervising retainer of her land of Mokuauia, Kailua, and as such received as compensation the use, free of rent, of a quarter acre of land, in addition to certain other perquisites. Upon the Queen's death Bright was told by Prince David to continue at the same compensation, which the retainer claimed meant reasonable wages for the work performed. At any rate, Bright concluded that he was entitled to monetary remuneration as well as royal perquisites and he brought suit accordingly. The jury awarded him \$450 and the Prince appealed, claiming that the verdict could not be sustained by the evidence.

The Supreme Court sustained the verdict in a unanimous decision.

"The view might well have been taken that the plaintiff's testimony was inconsistent and discredited by the averments in his bill in equity," says Judge Perry in the opinion. "The jury, however, the sole judge of the credibility of the witnesses, saw fit to believe upon all the evidence that no express agreement was made as to compensation. The finding cannot be set aside."

"Other contentions of the defendant are that the evidence showed a contract with the Queen and not with the defendant, that at best the promise of defendant was to pay the debt of another, that the land of Mokuauia was not the defendant's, and that in any event the defendant was not liable. The defendant had an interest in the land and if he saw fit to do so could employ the plaintiff to work there and render himself liable for the latter's compensation. There was evidence, as already stated, tending to show a hiring by the plaintiff personally and if there was such hiring, the debt created was not the Queen's but the defendant's."

"The bringing of the suit in equity which was later dismissed on demurrer on the ground of lack of jurisdiction or because a cause of action was not stated, does not estop the plaintiff from suing at law."

"The exceptions are overruled."

#### Question of Contracts.

Judge Dole yesterday heard argument on exceptions of defendant to the libel of First Mate Lesslie against Inter-Island Steam Navigation Co., claiming \$10,000 damages for alleged breach of contract for permanent employment and promotion. J. J. Dunne appeared for the libellant, and Abram Lewis Jr. for the libellee. The court desired a showing of authorities from the libellant to place his case out of the category of ordinary employment, in either private or public service, and in that of contracts. After both sides had produced cases from the books, Judge Dole allowed them ten days in which to file briefs.

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..... said palm trees on Beretania street, has absolutely refused to do so, and has announced its intention of continuing the mutilation and destruction of said palm trees, and that the plaintiff verily believes that it will do so unless restrained by the process of this honorable court.

"That the mutilation of said palm trees is wholly unnecessary for the betterment of defendant's service, or the reconstruction of defendant's lines, and that said lines can be reconstructed without any hardship to defendant, and in such a way as to avoid the mutilation of said palm trees."

"That said acts of defendant are without any justification of law whatsoever, and are in contravention of plaintiff's rights under the laws of the Territory of Hawaii and under the Constitution of the United States, and that said acts if continued will cause plaintiff irreparable damage and injury, capable of compensation in an action at law."

#### NEW CARTER TRUSTEE.

Chief Justice W. F. Frear has in accordance with a petition of a majority of the bondholders appointed John H. Hall as a trustee under the will of the late Henry A. Carter to hold with Thomas H. Smith and J. C. Smith, trustee of the same, with the same powers and duties as the late Henry A. Carter.

## MORE RESIGNATIONS FROM THE HOME RULE PARTY

### Boyd, Markham and Clark Will Join the Republicans and Promise to Bring the Rest of the Home Rulers With Them.

Three more desertions from the Home Rule Executive Committee took place at the regular weekly meeting of that body yesterday morning. George Markham, James H. Boyd and Joseph Clark, all high in the councils of the party tendered their resignations as officers of the executive committee and as members of the party. The three are said to be waiting to be invited to join the Republican party and wouldn't object to accepting official positions with that organization. The resignations were referred to a special committee which will report at the next meeting of the committee.

George Markham is reported as saying that he has decided to withdraw from politics. He has been one of the most active politicians in the Territory since annexation, but now he intends to quit, unless he joins the Republican party. Markham was editor of the independent Home Rule paper, and also chairman of several committees in the party.

"Jimmie" Boyd also expects to return to the Republican party, which he deserted last November after being turned down on a nomination for supervisor. He wasn't in the Home Rule party over a week before he had received the nomination for the same office from the hands of his new compatriots and he immediately became one of the party leaders. Boyd is reported as saying that he will bring back into the Republican ranks a majority of the Home Rule party.

Clark was also a member of the executive committee and was the Home Rule candidate for the House in the Fourth District in 1900. All three men are telling their friends that they intend to join neither party at present, but simply to look on and see which way the "cat is going to jump."

The withdrawal of Boyd, Markham and Clark means the final disintegration of the Home Rule party. All three really intend to join with the Republicans now.

## NAVY DEPARTMENT WILL BUILD STEEL WATER LIGHTER

Acting under the advice of the Navy Department, Admiral Terry has asked for estimates on a new steel scow to be used in lightening water to vessels of the navy in the harbor or stream. Only local firms have been asked to prepare estimates on the specifications furnished by the Navy Department, and if the tenders are satisfactory formal bids will probably be asked.

The specifications call for a two-hundred-ton steel lighter, made especially for the purpose of lightening fresh water to vessels which cannot come up to the naval wharves. This is a convenience which has long been needed, especially in the past, when some of the larger vessels of the United States navy were unable to come inside the harbor.

The request for estimates has been made to a number of Honolulu firms, and it is the intention if possible to have the lighter built in the islands. If it is done, it will be the first construction of vessels for the United States government ever attempted here. If the estimates for construction here are in excess of what the Navy Department desires, outside bids may be asked, and it is the intention also to allow local firms to make estimates and to have the lighter shipped in parts to Honolulu, but to be erected here.

A lighter such as the Navy Department intends to put into the service for the Naval Station in Hawaii is estimated to cost from \$8,000 to \$10,000.

## DEATH OF MRS. WM. D. WESTERVELT

After a long period of suffering patiently endured, Mrs. Louisa C. Westervelt, wife of Rev. W. D. Westervelt, passed away yesterday morning at the age of 53 years. Funeral services preceding cremation will be held at the house, 1036 Kinau street, at 2 o'clock this afternoon, and a short burial service tomorrow at the same hour, when the ashes will be deposited in the missionary plot in Kawaiahaeo cemetery.

Mrs. Westervelt was born in New York State and was educated in Oberlin, Ohio, graduating from the Ladies Course of Oberlin College in 1879. She was married in 1873 to William D. Westervelt.

Mr. and Mrs. Westervelt came to the Islands in 1889 where they spent two years in the mission field. After ten years of pastoral work in Chicago, they came back to Honolulu, where Mrs. Westervelt has, in spite of very frail health and oftentimes great suffering, given most valuable aid and sympathetic support and counsel, not only in her husband's work but in that of various organizations. This has been true of her from the beginning of her husband's pastoral life soon after their marriage. She had always taken a most active interest in work for Hawaiian girls as well as for those of other nationalities in Hawaii. Her self-sacrificing devotion to the missionary cause at home and elsewhere showed itself especially in many lonely hours of suffering, heroically borne, when she insisted on sending her husband forth, always saying, "The work must come first."

A trip to Japan and China a few months since, procured but temporary alleviation in a life which has scarcely known a day without some pain. During the first few weeks after the return from the Orient Mrs. Westervelt was able to drive out, but later her illness increased severely on her strength and capacity for endurance, and thus her death deprived us of one rare in her of character, and spirituality, and in fortitude and strict devotion to the great cause of humanity.

It is expected that many public school teachers will quit after the summer holidays in order to accept of the position of teachers in the public schools of the Hawaiian Islands.

## PLAINTIFF WINS POINT

### Miss Peabody Is Granted Chance To Contest Her Rights.

A unanimous opinion of the Supreme Court, written by Chief Justice Frear, gives Lucy K. Peabody a chance to prosecute her action to quiet title against S. M. Damon, J. O. Carter, W. P. Allen, C. M. Hyde and W. O. Smith, Trustees under the will of B. P. Bishop, deceased.

Circuit Judge De Bolt directed a jury to find a verdict for the defendants. A writ of error obtained by the plaintiff carried the matter to the Supreme Court, where it is now decided on a motion by defendants to quash the writ. Some of the grounds of this motion are found well taken, but the writ will only be dismissed if the plaintiff fails to perform a certain condition, as may be seen further on, which is apparently easy. E. C. Peters appeared for the plaintiff; Kinney, McLannahan & Cooper, S. H. Derby and Holmes & Stanley for the defendants.

One of the grounds of the motion to quash was that plaintiff had satisfied execution for costs and therefore was estopped from bringing a writ of error. The Supreme Court finds in effect that the costs were but a small part of the case. Judgment for the possession of the land was the main thing and it was not satisfied. Hence the writ of error would stand in that regard.

Another ground was that service was not made on C. M. Hyde (the late Dr. Hyde), but the Supreme Court holds that service on a dead man is unnecessary.

A substituted service as to defendant Allen is held invalid and the motion to strike from the record an amended return of service is granted. At the same time the Supreme Court says:

"Service on the defendants was not a prerequisite to bringing the record here. The writ goes to the clerk or judge of the lower court. The clerk or judge returns the record to this court. This court acts on the record. Service on any defendant is necessary merely to enable the court to dispose of the case as to him, because he is entitled to a hearing before his rights can be affected. But if, as is the case here, the record shows that he never was a party, though he was named as a defendant, and that he is not entitled to a hearing, the court may act without notice to him."

The conclusion of the opinion gives the plaintiff an opportunity to have proper service made on the defendant, not properly served before, the court saying: "The writ will be dismissed unless the plaintiff within ten days takes proper steps to enable the court to proceed to a hearing as to defendant Allen."

As part of the grounds on which the case was thrown out of the Circuit Court related to the failure of service on the dead trustee, the Supreme Court's decision virtually, so far as that point is concerned, requires a trial of the action on its merits.

## BANKRUPTCY LAW GIVEN

Judge Sanford B. Dole rendered a decision in the Federal Court yesterday, in the matter of the petition of H. Hackfeld & Co., Hoffschlaeger Co. and Seattle Brewing & Malting Co. against Y. Y. Hirose, doing business as Hirose Shoen, for adjudication of bankruptcy, allowing the prayer of the petition and adjudging respondent a bankrupt. Thayer & Hemenway appeared for petitioners; E. A. Douthitt for respondent.

It was prayed in the petition that the respondent be adjudged a bankrupt on the ground that he made, within four months preceding the date of the petition, a general assignment to one T. Shiro, for the benefit of his creditors, thereby committing an act of bankruptcy.

The petition was opposed on the ground that the petitioners had consented to the assignment and therefore were estopped from taking proceedings in bankruptcy. Judge Dole shows that the Bankruptcy Act of 1898, which supersedes all insolvent laws of the various States in the Union, provides that "an assignment for the benefit of creditors is made an act of bankruptcy and creditors may apply for an adjudication of the debtor as a bankrupt within four months after the time of said assignment."

After a citation of authorities, the decision leads up to the conclusion already stated with the following remarks:

"From these authorities and from the provisions of the statute, it appears to me that the law applicable to this case does not justify a ruling that the petitioning creditors are estopped by their acts referred to from applying to have the respondent adjudged a bankrupt. The facts brought out in the evidence in regard to the unsatisfactory administration of the assignee are not necessary to this conclusion. They are illustrations of the importance of the rule that creditors may at any time, within the legal limits, move to have the administration proceedings terminated and the whole matter transferred to the jurisdiction of the bankruptcy court. It is in case of an insolvency, disinterested or fraudulent assignee that the law is intended to protect their interests, and all business of an assignee which was intended to be done at the time of the assignment is to be done at the time of the bankruptcy proceedings."

## COMPANY IS LIABLE

### H. Jeffs Gets Hundred Dollars In Damages

Another hundred-dollar judgment was given against the Honolulu Rapid Transit Co., in district court by Judge Lindsay yesterday afternoon. Harold Jeffs sued the company for \$200 damages, for being forcibly ejected from a Beretania street car, after the conductor had refused to accept a transfer given him on the King street car.

Jeffs in his testimony stated that he had paid five cents to the conductor of the King street car and at Alapai had demanded and been given a transfer to the Beretania street line. He walked from King to Beretania streets and boarded the first car. He tendered to the conductor on this car the transfer from the King street conductor, which he claimed to have accepted in good faith. The second conductor declined to accept the transfer ticket and demanded five cents, which Jeffs said he refused to pay. He was thereupon ejected from the car to his great humiliation, discomfort, etc.

The defense interposed by the Rapid Transit Co. was largely on the legal phase of the question. W. L. Whitney, who appeared for the defendant, contended that the company was not required either by its rules or by its charter to give transfers from King street to Beretania street, and that the transfer tendered by Jeffs had been no more than a worthless piece of paper. The case, he said, was different from the Rhodes case wherein the plaintiff had a right to the transfer, in accordance with the rules of the company, but here there was no authority for the issuance of the transfer at all.

"That was not your contention in the Rhodes case," mildly suggested P. L. Weaver who appeared for the plaintiff.

"No, that was not our contention, but it is what the court held and that is law until reversed."

Judge Lindsay said that argument on the part of the plaintiff was not necessary. "The facts of the case do not seem to leave much room for argument," said Judge Lindsay in finding for the plaintiff. "I am satisfied that the defendant is liable and shall award judgment for the plaintiff. I think that one hundred dollars damages is sufficient, with costs of court."

Mr. Whitney asked that the court pass upon the matter more fully, and though Judge Lindsay said he didn't have to, he consented. "I believe the defendant corporation from the evidence, is fully convinced that the first conductor made a fool of himself, and should not have given the transfer," said the court. "And I believe that a jury would find that the conductor made several kinds of a fool of himself. But the plaintiff, Mr. Jeffs, accepted the transfer in good faith and tendered it to the conductor on the second car. There is no doubt but what he was humiliated and ejected and suffered great discomfort."

Mr. Whitney gave notice of appeal to the circuit court. The incident for which damages were awarded took place February 29th.

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